IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8772 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKUBA JILUBHA

Versus

BHAVNAGAR DAIRY

Appearance:

MR TR MISHRA for Petitioner

NOTICE SERVED for Respondent No. 1

MR PM RAVAL for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/02/2001

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is the workman serving in the Bhavnagar Dairy, a unit of Gujarat Dairy

Development Corporation, the respondent no. 1 herein. The petitioner was serving as a daily wage labour. The petitioner had resigned from service on 31st March, 1981, however, after some years, he raised an industrial dispute and claimed that he had not resigned from service and his service was illegally terminated. The dispute was referred to the Labour Court, Bhavnagar and was numbered as Reference [LCB] 19 of 1987. By his judgment and award dated 10th May, 1989, the Labour Court directed the worker's reinstatement in service, however, refused the backwages. Since then, the petitioner appears to have moved Misc. Application No. 40 of 1990 for clarification. Under order dated 30th August, 1990, it was clarified that the petitioner was entitled to continuity of service. Inspite of the said orders, the petitioner was not reinstated in service. He, therefore, preferred the present petition. Pending this petition, by order dated 19th March, 1993, the petitioner was reinstated in service in the pay scale of Rs. 750-940. In the petition, the petitioner has claimed reinstatement in service and the backwages.

Today, at the time of hearing, Mr. Mishra has specifically given up the claim either for the backwages or for the salary for the period from the date of the award ie., 10th May, 1989 till the date of reinstatement in service ie., 19th March, 1993. Mr. Mishra, however, has submitted that the benefit of continuity of service which has been expressly conferred under the order dated 30th August, 1990 has not been given to the petitioner. If such benefit is given, the petitioner can claim the benefit of voluntary retirement scheme, which has since been introduced in the respondent-dairy.

I see no justification in not giving the benefit of continuity to the petitioner inspite of the award of the learned Labour Court. Admittedly, the said award has not been challenged by the respondent-dairy and has thus become final. The respondent-dairy is, therefore, bound to give the benefit of continuity of service, as ordered by the Labour Court. The petition, therefore, requires to be allowed to that extent. It is, therefore, declared that on his reinstatement in service in the year 1993, the petitioner shall be entitled to the benefit of continuity of service for the period - from the date of his discharge from service till the date of reinstatement. It is, however, clarified that the petitioner being a daily wager at the time of his discharge/resignation from service, he shall not be entitled to increments for the aforesaid period. The petitioner shall not be entitled to any other benefit

arising of such continuity in service. Rule is made absolute to the above extent. There shall be no order as to costs.

{Miss R.M Doshit, J.}

Prakash*